

By: Orr

H.B. No. 3945

A BILL TO BE ENTITLED

AN ACT

relating to a title insurance company affidavit as a release of lien.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.017(a), Property Code, is amended by adding Subdivision (5-a) and amending Subdivision (6) to read as follows:

(5-a) "Title insurance agent" means a person licensed as a title insurance agent under Chapter 2651, Insurance Code.

(6) "Title insurance company" means a corporation or other business entity authorized ~~[and licensed]~~ to engage in ~~[transact]~~ the business of insuring titles to interests in real property in this state.

SECTION 2. Section 12.017, Property Code, is amended by amending Subsections (b), (c), (d), (e), (f), (g), (h), and (i) and adding Subsections (j) and (k) to read as follows:

(b) This section applies only to a mortgage on:

(1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or

(2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

(c) An ~~[If a mortgagee fails to execute and deliver a~~

1 ~~release of mortgage to the mortgagor or the mortgagor's designated~~
2 ~~agent within 60 days after the date of receipt of payment of the~~
3 ~~mortgage by the mortgagee in accordance with a payoff statement~~
4 ~~furnished by the mortgagee or its mortgage servicer, an] authorized~~
5 officer of a title insurance company or a title insurance agent may,
6 on behalf of the mortgagor or a transferee of the mortgagor who
7 acquired title to the property described in the mortgage, execute
8 an affidavit that complies with the requirements of this section
9 and record the affidavit in the real property records of each county
10 in which the mortgage was recorded.

11 (d) An affidavit executed under Subsection (c) [~~this~~
12 ~~section~~] must be in substantially the following form [~~state that~~]:

13 AFFIDAVIT AS RELEASE OF LIEN

14 Before me, the undersigned authority, on this day personally
15 appeared (insert name of affiant) ("Affiant") who, being first duly
16 sworn, upon his/her oath states:

17 1. My name is (insert name of Affiant), and I am an
18 authorized officer of (insert name of title insurance company or
19 title insurance agent) ("Title Company").

20 2. This affidavit is made on behalf of the mortgagor or a
21 transferee of the mortgagor who acquired title to the property
22 described in the following mortgage:

23 (describe mortgage, the name of the mortgagor, and the property
24 described in the mortgage)

25 3. ("Mortgagee") provided a payoff statement with respect
26 to the loan secured by the mortgage.

27 4. Affiant has ascertained that Title Company delivered to

Mortgagee payment of the loan secured by the mortgage in accordance with the payoff statement.

5. The mortgage relates to:

(A) property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime; or

(B) property, other than property described by Paragraph (A) above, for which the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

6. Pursuant to Section 12.017, Texas Property Code, this affidavit constitutes a full and final release of the mortgage from the property.

Signed this___ day of _____, ____.

(signature of affiant)

State of _____

County of _____

Sworn to and subscribed to before me on _____ (date) by

_____ (insert name of affiant).

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed

name)

My commission expires:

~~[(1) the affiant is an authorized officer of a title insurance company,~~

1 ~~[(2) the affidavit is made on behalf of the mortgagor~~
2 ~~or a transferee of the mortgagor who acquired title to the property~~
3 ~~described in the mortgage;~~

4 ~~[(3) the mortgagee provided a payoff statement with~~
5 ~~respect to the loan secured by the mortgage;~~

6 ~~[(4) the affiant has ascertained that the mortgagee~~
7 ~~has received payment of the loan secured by the mortgage in~~
8 ~~accordance with the payoff statement, as evidenced by:~~

9 ~~[(A) a bank check, certified check, escrow~~
10 ~~account check from the title company or title insurance agent, or~~
11 ~~attorney trust account check that has been negotiated by the~~
12 ~~mortgagee; or~~

13 ~~[(B) another documentary evidence of the receipt~~
14 ~~of payment by the mortgagee;~~

15 ~~[(5) more than 60 days have elapsed since the date~~
16 ~~payment was received by the mortgagee;~~

17 ~~[(6) the title insurance company or its agent has~~
18 ~~given the mortgagee at least 15 days' notice in writing of its~~
19 ~~intention to execute and record an affidavit in accordance with~~
20 ~~this section, with a copy of the proposed affidavit attached to the~~
21 ~~written notice; and~~

22 ~~[(7) the mortgagee has not responded in writing to the~~
23 ~~notification, or a request for additional payment made by the~~
24 ~~mortgagee has been complied with at least 15 days before the date of~~
25 ~~the affidavit.]~~

26 (e) An [The] affidavit filed under Subsection (c) or (f)
27 must include the names of the mortgagor and the mortgagee, the date

1 of the mortgage, and the volume and page or clerk's file number of
2 the real property records where the mortgage is recorded, together
3 with similar information for a recorded assignment of the mortgage.

4 (f) The title insurance company or title insurance agent
5 must notify the mortgagee that the company or agent may file for
6 record at any time the affidavit as a release of lien after payment
7 is made to the mortgagee. Not later than the 30th day after the date
8 the mortgagee receives the notice, the mortgagee may file for
9 record a separate affidavit describing the mortgage and property
10 and controverting the affidavit by the title insurance company or
11 title insurance agent as a release of lien. The mortgagee's
12 separate controverting affidavit is valid only if the mortgagee
13 mails a copy of the affidavit to the title insurance company or
14 title insurance agent within the 30-day period provided by this
15 subsection. [~~The affiant must attach to the affidavit a~~
16 ~~photostatic copy, certified as a true copy of the original~~
17 ~~document, of:~~

18 [~~(1) the documentary evidence that payment has been~~
19 ~~received by the mortgagee, including the mortgagee's endorsement of~~
20 ~~a negotiated check if paid by check, and~~

21 [~~(2) the payoff statement.~~]

22 (g) An affidavit under Subsection (c) [~~that is executed and~~
23 ~~recorded as provided by this section~~] operates as a release of the
24 mortgage described in the affidavit if the affidavit, as provided
25 by this section:

26 (1) is executed;

27 (2) is recorded;

1 (3) correctly recites the facts stated in the
2 affidavit; and

3 (4) is not controverted by a separate affidavit by the
4 mortgagee in accordance with the requirements of Subsection (f).

5 (h) The county clerk shall index an ~~[the]~~ affidavit filed
6 under this section in the names of the original mortgagee and the
7 last assignee of the mortgage appearing of record as the grantors
8 and in the name of the mortgagor as grantee.

9 (i) A person who knowingly causes an affidavit with false
10 information to be executed and recorded under this section is
11 liable for the penalties for filing a false affidavit, including
12 the penalties for commission of offenses under Section 37.02 of the
13 Penal Code, and to a party injured by the affidavit for actual
14 damages or \$10,000 ~~[\$5,000]~~, whichever is greater. The attorney
15 general may sue to collect the penalty. If the attorney general or
16 an injured party bringing suit substantially prevails in an action
17 under this subsection, the court may award reasonable attorney's
18 fees and court costs to the prevailing party.

19 (j) A title insurance company or title insurance agent that,
20 at any time after payment of the mortgage, files for record an
21 affidavit executed under Subsection (c) may use any recording fee
22 collected for the recording of a release of the mortgage for the
23 purpose of filing the affidavit.

24 (k) This section does not affect any agreement or obligation
25 of a mortgagee to execute and deliver a release of mortgage.

26 SECTION 3. The change in law made by this Act applies only
27 to an affidavit filed on or after the effective date of this Act. An

H.B. No. 3945

1 affidavit filed before the effective date of this Act is governed by
2 the law in effect immediately before the effective date of this Act,
3 and that law is continued in effect for that purpose.

4 SECTION 4. This Act takes effect September 1, 2009.